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No. 73-345
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In the Supreme Court of the United States

OCTOBER TERM, 1973

ROMAN CASEY A/K/A MELVIN WARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The issue presented by the petition is whether the trial court abused its discretion in denying petitioner's motion for a continuance of trial to permit petitioner to obtain counsel.

After a jury trial in the United States District Court for the Middle District of Georgia, petitioner was convicted of conspiring to defraud and obtain property from certain pecan growers, in violation of 18 U.S.C. 371, 1341, and 2314. He was sentenced to five years' imprisonment on each of nine counts, the sentences to run concurrently. The court of appeals affirmed (Pet. App. A.).

The evidence concerning the motion for a continuance was as follows: The indictment was returned on July 25, 1972. Petitioner retained an attorney, W. Paul Thompson, who appeared at the arraignment on

November 2, 1972, when petitioner pleaded not guilty; at that time Thompson announced that he was representing petitioner (Tr. 13).[1] The following day, the Assistant United States Attorney wrote Mr. Thompson and petitioner informing them that trial was scheduled for November 27, 1972 (Tr. 14). Because the government's case required about 43 witnesses from various locations, many from out of state (Tr. 15-16), and because Mr. Thompson had previously informed the prosecutor that he intended to obtain associate counsel, the Assistant United States Attorney stressed in this letter that petitioner's counsel should be ready to proceed on the scheduled date (Tr. 14).

On November 7, 1972, Mr. Thompson informed petitioner that he was not going to represent him but would try to obtain associate counsel for him (Tr. 16-17). On November 17, 1972, Mr. Thompson wrote the Assistant United States Attorney informing him that he would no longer represent petitioner and that he had been unable to obtain associate counsel (Tr. 15). The Assistant United States Attorney had asked Mr. Thompson to impress upon petitioner that if he did not obtain a lawyer to help him in this case he would be forced to go to trial without counsel. Mr. Thompson told the Assistant United States Attorney that he related this message to petitioner (Tr. 18).

On November 27, 1972, William Howard LaPorte appeared specially to present a motion written by petitioner and to argue that motion for him. Mr. LaPorte was unable to represent petitioner at trial because he was not prepared, having appeared only for the purpose of presenting the motion (Tr. 11). Neither Mr. LaPorte

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[1] "Tr." refers to the transcript of the trial and of pretrial motions.

nor petitioner explained why the motion for a continuance had not been presented to the court prior to the trial date. The motion, *inter alia,* stated that petitioner had "contacted all attorneys which would be acceptable to him as counsel," but that he had not been able to retain a lawyer, that none would take his case.[2] Mr. LaPorte argued that petitioner had reasonably relied on Mr. Thompson's statement to petitioner on November 7, 1972, that he would try to obtain associate counsel for him. The trial court rejected this argument, stating that the case had been specially listed because of the number and location of the witnesses and that petitioner had had twenty days in which to get a new lawyer (Tr. 18-19). The case was ordered to trial and petitioner conducted his own defense (Pet. 7).

Petitioner's claim that the trial court abused its discretion in denying a continuance was properly rejected in the opinion of the court of appeals, upon which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.

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[2] At no time did petitioner represent that he was indigent.